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IN THE

# Supreme Court of the United States

## October Term, 1971.

## No. 71-1384.

IN THE MATTER OF
PENN CENTRAL TRANSPORTATION COMPANY,
*Debtor.*

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY FIRST MORTGAGE 4% BONDHOLDERS COMMITTEE,
*Petitioner,*

*v.*

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR., and WILLARD WIRTZ, Trustees of the Property of the Penn Central Transportation Company,
*Respondents.*

## BRIEF FOR RESPONDENTS IN OPPOSITION.

EDWIN P. ROME,
MARVIN COMISKY,
GONCER M. KRESTAL,
BLANK, ROME, KLAUS & COMISKY,
11th Floor, Four Penn Center,
Philadelphia, Pa. 19103
*Special Counsel for the Trustees of the Property of the Penn Central Transportation Company.*

ROBERT W. BLANCHETTE,
*Counsel for the Trustees of the Property of the Penn Central Transportation Company.*

International, 711 So. 50th St., Phila., Pa. 19143—Tel. SA 7-8711 Area Code 215

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## OPINION BELOW.

The Opinion of the Court of Appeals set forth in the Appendix to the Petition for Writ of Certiorari commencing at page 1a has been reported at 455 F.2d 811.

## COUNTER STATEMENT OF QUESTION PRESENTED.

Whether a committee representing bondholders of The New York, New Haven and Hartford Railroad Company (New Haven) has standing to appeal from an order in the reorganization proceedings of the Penn Central Transportation Company (Debtor) authorizing the sale of the Debtor's property free of a mortgage in favor of the New Haven, which sale was consented to by the mortgage indenture trustees and the reorganization trustee of the New Haven (New Haven Trustee)?

## COUNTER STATEMENT OF THE CASE.

The instant matter arises out of the dismissal by the United States Court of Appeals for the Third Circuit (Court of Appeals) of the appeal taken by the petitioner, New Haven First Mortgage 4% Bondholders Committee (Committee), from Order No. 63 of the United States District Court for the Eastern District of Pennsylvania (Reorganization Court) in the Debtor's reorganization proceedings under Section 77 of the Bankruptcy Act, 11 U.S.C. § 205, on the ground of lack of standing to appeal.

Order No. 63 of the Reorganization Court authorized the Trustees of the property of the Debtor (Penn Central Trustees) to affirm a Memorandum of Intent with the Metropolitan Transportation Authority (MTA) and the Con-

necticut Transportation Authority (CTA) relating to suburban commuter service in the New York metropolitan area (App. 15a-16a).[1] The said memorandum provided, *inter alia*, for the sale to MTA of the Debtor's properties between Woodlawn Junction, New York City, and the border of the States of New York and Connecticut at Port Chester, New York. The stated consideration to be paid by MTA was $7,200,000. In addition, the memorandum provided for a lease of commutation facilities in the State of Connecticut to CTA for a period up to 60 years (App. 2a).

The purpose of the parties in entering into the Memorandum of Intent was to improve commutation service between New York City and the suburban areas of New York and Connecticut subject to the sale and lease arrangements. It was not disputed in the proceedings below that the consummation of the Memorandum of Intent would be in the public interest, and would be beneficial to the Debtor's estate.

The property subject to the Memorandum of Intent was conveyed to the Debtor on December 31, 1968, by the New Haven Trustee (App. 2a, fn. 1).[2] As part of the price for the conveyance, the New Haven Trustee received, and still holds, bonds secured by a 5% Divisional First Mortgage (Penn Central Divisional First Mortgage) on certain former New Haven assets, including the property sold to MTA and leased to CTA (App. 3a, fn. 3).

The Memorandum of Intent with MTA and CTA was entered into, but not consummated, prior to the filing of

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1. References to "App." are to the appendix attached to Petitioner's Petition in this Court; references to Rec. are to the Appendix filed by Petitioner in the Court of Appeals.

2. The New Haven, as the Debtor, is a railroad in reorganization proceedings under Section 77 of the Bankruptcy Act, the New Haven proceedings being in the United States District Court for the District of Connecticut.

Debtor's petition for reorganization under Section 77 of the Bankruptcy Act. Thereafter, the Penn Central Trustees reviewed the Memorandum of Intent and concluded it was in the best interests of the Debtor's estate. Accordingly, they petitioned the Reorganization Court, for authority to implement the Memorandum (Rec. 2-7).

To convey good title to the property sold to MTA, it was necessary to transfer the property free and clear of the lien of the mortgage in favor of the New Haven. Under Section 77(o) of the Bankruptcy Act, 11 U.S.C. § 205(o), property may be sold free and clear of such liens, the lien attaching to the proceeds of the sale.

At the hearing on the petition relating to the Memorandum of Intent, appearances were entered, among others, on behalf of the New Haven Trustee, the Indenture Trustees under the Penn Central Divisional First Mortgage (Indenture Trustees) and the Committee (App. 2a). The Committee is a committee of holders of bonds issued by the New Haven prior to its own reorganization. The bonds, which are not the Penn Central Divisional First Mortgage Bonds presently held by the New Haven Trustee, were formerly secured by a lien on New Haven assets, including the property sold to MTA. When those assets were transferred to the Debtor on December 31, 1968, the property was conveyed free and clear of prior mortgage liens.[3] The Committee has not sought leave to intervene generally in the Debtor's reorganization proceedings.

During the course of the hearing, the New Haven Trustee voiced no opposition to the sale to MTA. He did, however, request The Reorganization Court to reserve jurisdiction to require, after some future determination, additional cash deposits under the mortgage securing bonds issued to the New Haven in the event it was held that the

3. See New Haven Inclusion Cases, 399 U.S. 392 (1970).

consideration for the sale exceeded the $7.2 million cash received (Rec. 14-20). The Committee also felt that the amount received in cash was less than "fair value" under the mortgage;[4] its position was somewhat different from the New Haven Trustee's, in that it urged the matter of additional cash deposits be resolved *before* the sale was made (Rec. 20). The Indenture Trustees supported the New Haven Trustee's position, but did not indicate whether the sale should be deferred pending determination of fair value (Rec. 26).

The position of the Penn Central Trustees was that the transaction could not go forward despite its obvious benefits to the estate and the public interest, if the estate were to be exposed "to an open-ended claim by the New Haven Trustee for additional moneys . . ." (Rec. 27).

The Reorganization Court recessed the hearing to permit the parties to attempt a compromise (App. 3a). The compromise, which was reached with the New Haven Trustee, was reflected in Order No. 63.[5] By Order No. 72, the

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4. Specifically, it was the Committee's position that the capitalized value of the deficits from commuter operations which the Debtor would avoid in the future by reason of the sale should be included in a determination of the fair value of the consideration. From that premise, the Committee requested that the Debtor deposit with the Indenture Trustees cash equal to the capitalized value of the deficits.

5. Order No. 63 authorized the Penn Central Trustees to affirm the Memorandum of Intent (paragraph 1) and directed that the cash consideration from the sale to MTA be deposited with the Indenture Trustees (paragraph 3(a)). The Reorganization Court reversed jurisdiction to determine the valuation and disposition of the consideration received by the Penn Central Trustees and to determine the respective rights of the parties thereto (paragraph 3), subject to the provision that the Debtor's obligation to discharge any obligation to the New Haven Trustee (over the cash consideration received from MTA) was to be limited to the sum of the cash consideration to be received from the sale of any property leased to the CTA plus the annual rental payments from the CTA (paragraph 4), which rentals were to be deposited in a special bank account pending the Court's determination (paragraph 3(b)) (App. 15a-16a).

Reorganization Court recognized that the Committee had not consented to the compromise, at the same time noting that there was no waiver of objections to the Committee's standing in the Reorganization Court (App. 17a).

On October 23, 1970, the Committee filed a Notice of Appeal from Order No. 63, but did not seek and never obtained either a stay of the execution of the Order from the Reorganization Court or a supersedeas from the Court of Appeals (App. 5a, fn. 8).

On January 4, 1971, the sale of the Debtor's property to MTA was consummated and the proceeds from the sale deposited with the Indenture Trustees. Subsequently, on January 26, 1971, the Reorganization Court, by Order No. 147 entered after notice and hearing, approved a settlement agreement between the Penn Central Trustees and the New Haven Trustee, whereby the approximately $18 million then on deposit with the Indenture Trustees, including the proceeds of the sale to MTA, would be paid out by the Indenture Trustees and divided equally between the two parties (App. 4a-5a, fn. 6).[6]

On January 27, 1971, after notice given, a hearing was held before the Honorable Robert P. Anderson, presiding over the proceedings for the reorganization of the New Haven, for the purpose of approving the aforesaid agreement between the Trustees of the respective railroads in reorganization. The Committee was represented at that hearing by its attorneys, and did not object to such approval being given. As a consequence, the agreement was approved and the proceeds of the MTA transaction were distributed in accordance therewith (App. 4a, fn. 6).

The Penn Central Trustees thereupon moved the Court of Appeals to dismiss the Committee's appeal on the

6. Events subsequent to the entry of Order No. 72 were before the Court of Appeals in the form of an affidavit attached to Appellees' Motion to Dismiss the Appeal.

grounds, *inter alia*, of lack of standing and mootness. Although this motion was argued preliminary before a panel of the Court of Appeals on May 4, 1971, the issues raised thereby were continued for disposition by the panel of the Court which was to hear argument on the merits of the appeal (App. 5a-6a, fn. 9).

After full argument with respect to all of the questions presented by the Committee's appeal and the motion to dismiss held on November 9, 1971, the Court of Appeals entered a judgment dismissing the appeal (App. 13a).

In the opinion of the Court of Appeals, the Committee was not a creditor or stockholder of the Debtor within the meaning of Section 77(c)(13) of the Bankruptcy Act, 11 U.S.C. § 205(c)(13), authorizing participation in railroad reorganization proceedings, and thus had no standing to appeal from the decision of the Reorganization Court made in the course of such proceedings. The Court of Appeals noted that the Committee's claim was not against the Debtor or the Debtor's property, which had been acquired from the New Haven Trustee free of the lien of the New Haven 4% mortgage, but against the New Haven Trustee and the bonds issued to the New Haven Trustee under the Penn Central Divisional First Mortgage in partial consideration for the transfer of the New Haven property to the Debtor. It further held that the Committee's indirect derivative interest in the Penn Central Divisional First Mortgage as a result of its claim against the bonds thereunder in the possession of the New Haven Trustee did not give the Committee the right to be heard or to appeal in the Debtor's reorganization proceedings. In support of this holding, the Court concluded (App. 10a):

> ". . . . This result will effectuate the purposes of Section 77 of the Bankruptcy Act. If those with purely derivative interests in a railroad reorganization were

allowed not only to participate in these proceedings but also to appeal from the resulting decisions, the already complicated and elaborate reorganization proceess developed by Congress might become hopelessly confounded. Further, there is no reason to believe that the New Haven Trustee will not adequately protect the interests of creditors of the New Haven, including the members of the New Haven Committee, in the Penn Central reorganization proceedings. . . ."

It is the position of the Penn Central Trustees that the ruling of the Court of Appeals is correct, as well as consistent with the decision of this Court, and should not be reviewed by this Court. The general interests of the Committee, insofar as they arise out of the Committee's claims against the New Haven, have been and will continue to be adequately represented in the Debtor's reorganization proceedings by the New Haven Trustee and the ruling of the Court of Appeals denying the Committeee the right to appeal is not prejudicial to these interests and does not otherwise involve an important question of federal law requiring consideration by this Court.

## REASONS FOR DENYING THE WRIT.

### The Matter Was Correctly Decided by the Court of Appeals.

#### A. The Committee Is Not a Creditor of the Debtor.

As noted by the Court of Appeals, the mere fact that the Committee was permitted to participate in the hearing in the Reorganization Court does not confer standing to appeal from the Court's decision absent a right to be heard in the proceeding. *Peckham v. Casalduc*, 261 F.2d 120, 121 (1st Cir. 1958), *cert. denied*, 359 U.S. 958 (1959); *In re South Street Bldg. Corp.*, 140 F.2d 363, 366 (7th Cir. 1943), *cert. denied*, 322 U.S. 761 (1944). The right of a party to be heard in a railroad reorganization proceeding and thus to appeal is governed exclusively by Section 77(c)(13) of the Bankruptcy Act,[7] which provides in pertinent part as follows:

> ". . . . The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either or the trustee or trustees of any mortgage, deed of trust or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and upon petition therefor and cause shown any such person or any other interested party may be permitted to intervene. . . ."

The Committee has never sought to intervene in the Debtor's reorganization and therefore has no standing to

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7. Peckham v. Casalduc, 261 F.2d 120 (1st Cir. 1958), cert. denied, 359 U.S. 958 (1959); Horowitz v. Kaplan, 193 F.2d 64 (1st Cir. 1951); In re Keystone Realty Holding Co., 117 F.2d 1003 (3d Cir. 1941).

appeal as an intervenor.[8] It is further not contended herein, as it was in the Court of Appeals, that the Committee is an indirect stockholder of the Debtor entitling it to appeal in that capacity. The Committee's standing to appeal under the Bankruptcy Act is based herein, as it must be, on the argument that the Committee represents "creditors" of the Debtor within the meaning of that term as used in Section 77(c)(13).

Section 77(b) of the Bankruptcy Act, 11 U.S.C. § 206(b), defines the term "creditor" as including ". . . all holders of claims of whatever character against the debtor or his property. . . ." The Committee concedes that it no longer has a lien against the former New Haven property transferred to the Debtor and has no other direct claim against the Debtor or its property. It argues, nonetheless, that Section 77(c)(13) of the Bankruptcy Act should be interpreted as permitting ". . . any person likely to be economically affected by the reorganization proceedings to be considered as a 'creditor'", and that it was so affected, albeit indirectly and derivatively, as result of its rights with respect to the Penn Central Divisional First Mortgage bonds held by the New Haven Trustee.

This construction of the statute is without support either in the statutory language or in any judicial decision. On the contrary, the Federal Courts have denied participation in reorganization proceedings to parties having only a derivative interest in the property of the Debtor, *Boston & Providence Railroad Stockholders Development Group v. Smith*, 333 F.2d 651 (2d Cir. 1964); see also *Callaway v. Benton*, 336 U.S. 132, 139 (1949), and have required a

8. Because the New Haven interests are fully represented in the Debtor's reorganization proceedings by the New Haven Trustee and the Indenture Trustees under the Penn Central Divisional First Mortgage, sound judicial administration would have required a denial of any application by the Committee to intervene.

direct personal interest in the subject matter of an order of the reorganization court as a condition to a party's standing to appeal from the order, see, *e.g.*, *Comstock v. Thompson*, 158 F.2d 151 (8th Cir. 1946); *In Re Huntingdon & Broad Top Mt. R.R. & Coal Co.*, 213 F.2d 411 (3d Cir. 1954).

As a general rule, the direct personal interest in the aspects of the Debtor's reorganization relating to The New Haven, including the subject matter of the instant order, lies not in the Committee, or any other claimant of the New Haven, but in the New Haven Trustee. That Trustee, contrary to the Committee's assertion, is more than ". . . simply a fiduciary appointed . . . to conduct proceedings in reorganization" (Petition, p. 13), but is authorized and obligated to represent and protect the interests of all creditors of the New Haven. He has heretofore adequately protected the Committee's interest in the Debtor's reorganization proceedings,[9] and, it must be assumed, will continue

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9. The settlement agreement between The Penn Central Trustees and the New Haven Trustees giving rise to Order No. 63, was a compromise of several conflicting interests: The public interest in preserving and improving essential, but unprofitable, commutation operations serving New York City; The New Haven interest in securing protection if, as the New Haven Trustee contended, there was value, recognizable under the mortgage, in the transaction over and above the $7,200,000 being paid by MTA for sale of the properties; and the Penn Central Trustees' interest in stopping the commuter deficits as soon as possible without exposure to an open-ended claim of many millions of dollars by the New Haven Trustee if his contentions were upheld.

Order No. 63 permitted MTA/CTA to acquire the Commuter operations immediately without further liability, and limited the Penn Central Trustees' obligation, if any, to pay additional sums to the Indenture Trustees, if the New Haven Trustee's contentions were sustained, to the rent received from the CTA lease, plus the proceeds thereafter realized from the sale of properties subject to the lease.

The New Haven Trustee, on the other hand, for the benefit of the New Haven estate, secured the necessary time to prepare valuation evidence in support of the contention that the value received by the Penn Central Trustees was greater then the cash consideration and the assurance that the substantial rental payments from CTA—

to do so in the future. *In re Huntingdon & Broad Top R.R. & Coal Co., supra.* The right to participate and to appeal from any order therein affecting the former New Haven property must be limited, therefore, to the New Haven Trustee.[10] If the New Haven Trustee fails in this obligation, the Committee can secure relief in the New Haven reorganization proceedings, which remain pending in the United States District Court for the District of Connecticut and in which the Committee is a party (App. 10a-11a, fn. 20).

To hold otherwise in the context of these proceedings would permit the participation in the Debtor's reorganization of not only the Committee, but of all other creditors and claimants of the New Haven who also have an interest in the Penn Central Divisional First Mortgage bonds held by the New Haven Trustee. Such a result would turn the

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approximately $800,000 per year for 60 years—which the Penn Central Trustees contended were not depositable with the Indenture Trustees under the Penn Central Divisional First Mortgage, would be available in the event he succeeded.

An agreement has subsequently been entered into between the Penn Central Trustees and the New Haven Trustee as to the disposition of the rental payments heretofore paid by CTA and deposited under Order No. 63 and to be paid in the future. This agreement will be submitted for approval in both the Penn Central and New Haven reorganization proceedings.

10. The decision of the Court of Appeals in limiting the right to appeal from orders in the Penn Central reorganization proceedings involving the New Haven interests generally to the New Haven Trustee has not ". . . created rigid and arbitrary requirements for the determination of standing . . ." (Petition, p. 14). On the contrary, the Court of Appeals has permitted the Committee to maintain separate appeals from orders of the Reorganization Court which directly affect the Committee (*i.e.*, injunction orders), as distinguished from the New Haven interests in general, where the New Haven Trustee may not be able adequately to represent the Committee's rights. In the matter of: Penn Central Transporation Company, Debtor, The New York, New Haven & Hartford Railroad Company, First Mortgage 4% Bondholders Committee, Appellant, United States Court of Appeals for the Third Circuit, Docket Nos. 72-1172, 1173 and 1174 (Order denying Motion to Dismiss Appeals.)

Debtor's reorganization into a town meeting and would cause procedural chaos, contrary to the purposes of Section 77 of the Bankruptcy Act.

The Court of Appeals thus correctly interpreted Section 77(c)(13) of the Bankruptcy Act as limiting the right to be heard and to appeal in a railroad reorganization proceeding to direct claimants of the Debtor, and its decision dismissing the Committee's appeal for lack of standing on the basis of this interpretation should not be reviewed by this Court.

### B. The Principles Enunciated in *Data Processing Service v. Camp*, 397 U.S. 150 (1970), Are Not Applicable to These Proceedings.

The Committee has contended in the alternative that its standing to appeal from the order of the Reorganization Court does not derive exclusively from the provisions of Section 77(c)(13) of the Bankruptcy Act, but should also be considered under the principles enunciated in *Data Processing Service v. Camp*, 397 U.S. 150 (1970). That decision sets forth the standards to be applied in determining the standing of a party to institute suit generally under the broad framework of Article III of the United States Constitution, in the absence of any statutory specification, and expressly reserves to Congress (397 U.S. at 154) the authority to establish more stringent standards as to standing under a particular statute, insofar as consistent with Article III.

Congress, in Section 77(c)(13) has enumerated the parties entitled to participate in a railroad reorganization as of right and provided a means for other interested parties to intervene. This specification is extensive in its coverage and was obviously intended to state the exclusive guideline with respect to standing in railroad reorganiza-

tion. *Peckham v. Casalduc, supra.* It conforms, moreover, to the requirements to Article III of the United States Constitution as stated in the *Data Processing* opinion, and constitutes a proper exercise of the legislative discretion in this respect.

Indeed, as was acknowledged by the Court of Appeals, the legislative restrictions placed on the parties permitted to be heard in railroad reorganizations are necessary to prevent these already complicated proceeds from becoming hopelessly confounded. Under these circumstances, the Court of Appeals properly limited its consideration as to standing to an analysis of Section 77(c)(13) of the Bankruptcy Act and did not err in holding that the principles enunciated in *Data Processing Service v. Camp* were not applicable to the instant matter.

## CONCLUSION.

For the above reasons, it is submitted that the decision of the Court of Appeals dismissing the Committee's appeal was a correct determination of a federal question which need not be reviewed by this Court. The Committee's Petition for a Writ of Certiorari should, therefore, be denied.

Respectfully submitted,

EDWIN P. ROME,
MARVIN COMISKY,
GONCER M. KRESTAL,
BLANK, ROME, KLAUS & COMISKY,
11th Floor, Four Penn Center,
Philadelphia, Pa. 19103
*Special Counsel for the Trustees of the Property of the Penn Central Transportation Company.*

ROBERT W. BLANCHETTE,
*Counsel for the Trustees of the Property of the Penn Central Transportation Company.*